REMARKS/ARGUMENTS

Claims 1-14 and 16-26 are pending in the present application.

This Amendment is in response to the Office Action mailed August 13, 2004. In the Office Action, claims 1-14, 16-25 were rejected under 35 U.S.C. §103(a). Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

The Office Action rejected claims 1-14 and 16-26 under 35 U.S.C. §103(a).

Applicants respectfully traverse the rejections and contend that the Examiner has not met the burden of establishing a prima facie case of obviousness for each rejection. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143, p. 2100-124 (8th ed., rev. 1, Feb. 2003). As analyzed below, none of the rejections meets any of the three basic criteria.

1. The Office Action rejected claims 1-4, 7-11, 13, 14, 17, 18, 20, 21, 24, and 25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,341,130 issued to Lakshman et al. ("Lakshman") in view of Barzilai et al. ("Barzilai") "Design and Implementation of an RSVP-Based Quality of Service Architecture for an Integrated Services Internet", 1998. and in further view of the article "DPF: Fast Flexible Demultiplexing using Dynamic Code Generation, written by Engler et al. ("Engler").

Applicants reiterate the arguments set forth in the previously filed Response to the Office Action. Lakshman discloses a packet classification method and apparatus employing two fields and Barzilai discloses a design and implementation of an RSVP-based quality of service architecture for an integrated services internet, as discussed in the previous response.

Engler discloses a fast, flexible message demultiplexing using dynamic code generation. Dynamic code generation is the creation of executable code at run time (Engler, page 1, right

column, lines 24-26). The technique exploits dynamic code generation in two ways: by using it to eliminate interpretation overhead by compiling packet filters into executable code, and by using filter constants to aggressively optimize this executable code (Engler, page 2, right column, section 3.1).

None of Lakshman, Barzilai, and Engler discloses, suggests, or renders obvious (1) a controller to dynamically create and remove the filters controlling access to the different service levels, and (2) satisfying filter criteria corresponding to an admission policy related to differentiated service levels. Therefore, there is no motivation to modify or combine Lakshman, Barzilai, and Engler as previously contended.

The Office Action states that Engler discloses dynamic filtering (Office Action, page 4, item 9). Applicants respectfully disagree. Engler merely discloses dynamically generating executable code for the filters, not dynamically creating and removing the filters based on an admission profile. The packet filters of Engler are fixed, and can be viewed as application code that is downloaded in to the kernel (Engler, page 5, right column, section 5). Since a kernel has to be always within the system and cannot be created or removed dynamically, the packet filters, being downloaded into the kernel, cannot be created or removed dynamically.

The Office Action apparently uses Engler as a hindsight reconstruction of the claimed invention. This hindsight reconstruction is impermissible in an obviousness rejection. "To defeat patentability based on obviousness, the suggestion...must come from prior art, not from the hindsight knowledge of the invention." Interconnect Planning Corp. v. Feil, 744 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Circ. 1985). Knowledge of applicant's disclosure must be put aside in reaching the obviousness determination. MPEP 2142. Here, neither Lakshman nor Barzilai suggests dynamically creating and removing filters. Engler discloses dynamically generating executable code for the filter, not creating or removing the filters. Accordingly, there is no suggestion to combine the cited references. Thus, no prima facie case of obviousness has been established.

2. The Office Action further rejected claims 5, 6, 16, 19, 22, and 23 under 35 U.S.C. §103(a) as being unpatentable over Lakshman in view of Barzilai as applied to claims 1, 13, 14, and 21, and further in view of U.S. Patent No. 6,651,101 issued to Gai et al. ("Gai").

The Office Action repeats the contention above and does not respond to Applicants' arguments in the previous response. As discussed previously, Gai discloses a local policy enforcer to determine the percentage of time that its processor has remained idle and its availability for storing policies (Gai, col. 12, lines 42-47). Since the processor belongs to a local policy enforcer, its memory cannot be a remote device. Gai, in effect, teaches away from the claimed invention by teaching storing policies in a local memory, not a remote device.

In view of the above, there is no suggestion or motivation to combine Lakshman, Barzilai, and Gai. In addition, as stated above, hindsight reconstruction of the claimed invention is impermissible. Furthermore, since Gai effectively teaches away from the claimed invention, there is no suggestion to combine the cited references.

3. The Office Action rejected claims 12 and 26 under 35 U.S.C. §103(a) as being unpatentable over Lakshman and Barzilai as applied to claims 1, 11, 21, 24 and 25 above and further in view of what was well known to the ordinary artisan in the networking art at the time the invention was made. The Office Action states that the Examiner takes Official Notice that a network administrator having the capability to remove filters based on an expiration day or time of day is well known in the networking art (Office Action, page 10, paragraph 37).

In response to Applicants' arguments, the Examiner states that a traversal by the Applicants that is merely a bald challenge, with nothing more, will be given little weight (Office Action, page 11, item 38), citing In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971). Applicants respectfully disagree and contend that Boon does not stand for that proposition. In Boon, the Examiner considered the rotary feeder disclosed by the prior art reference as the equivalent of a double door in the claimed invention. The Board affirmed the Examiner's decision and provided a reasoning to support its decision. The Board further included a definition taken from the dictionary to support the decision. The Court agreed with the Board, stating "...such a reference is a standard work, cited only to support a fact judicially noticed and, as here, the fact so noticed plays a minor role, serving only 'to fill the gaps' which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection." (Emphasis added.) The Court went on to state that "[w]e did not mean to imply...that a bald challenge, with nothing more, would be all that was needed..." Therefore, the Court in Boon

simply states that since the Board took judicial notice to support evidentiary showing by the Examiner, Applicants cannot make a bald challenge to that judicial notice. In contrast, in the instant case, the Examiner did not meet the burden of providing evidentiary showing first before taking official notice, as required by MPEP 2144.04B. The evidentiary showing must include a technical line of reasoning to show the official notice that controller dynamically removing a filter based on time of day is clear and unmistakable. The Examiner also failed to show that the network administrator is equivalent to the controller or the control means, recited in claims 12, 26, and having the characteristics as recited in claims 1 or 21.

Furthermore, Applicants did not merely make a "bald challenge" to the official notice. Applicants argued that Lakshman or Barzilai failed to disclose or suggest removing a filter. Therefore, the Examiner has the burden to show that the official notice supports removing the filter by a controller.

4. The Office Action rejected claims 1-14 and 16-26 under 35 U.S.C. §103(a) as being unpatentable over Lakshman in view of U.S. Patent No. 6,209,101 issued to Mitchem et al. ("Mitchem").

Lakshman discloses a packet classification method and apparatus employing two fields as discussed above.

Mitchem discloses adaptive security system having hierarchy of security servers. The technique provides for the dynamic creation and termination of security servers in order to adapt to organizational policy changes (Mitchem, col. 2, lines 39-41, col. 4, lines 39-41). Each security server executes in a common security domain. In order to create a new security server, the creating task spawns a new thread of execution and commands kernel to execute the spawned thread in the security domain common to the other security servers (Mitchem, col. 4, lines 56-60). To terminate security servers, the task issues a proper command to the kernel, such as a task delete command (Mitchem, col. 5, lines 30-33).

Lakshman and Mitchem, taken alone or in any combination, does not disclose, suggest, or render obvious a controller to dynamically create and remove the filters controlling access to the different service levels.

As discussed above, Lakshman does not disclose admission policy, differentiated service levels, and dynamic creation and removal of filters based on an admission profile. Mitchem merely discloses dynamic creation and termination of security servers, not packet filters. A security server is a task that is executed and managed by a kernel (Mitchem, col. 4, lines 17-20). Since it is a task running within an operating system, it is not equivalent to a packet filter that is located at a network interface to filter packet data. A task in an operating system kernel cannot receive and/or filter packet data in a network. Furthermore, the security policies are not the same the admission policy. The security policies here refer to controlling access to computing resources (Mitchem, col. 3, lines 6-8). In contrast, admission policy refers to differentiated services in a data network.

Applicants submit that independent claims 1, 13, 21 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejections under 35 U.S.C. §103(a) be withdrawn.

Conclusion

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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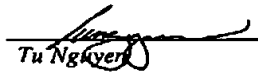

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